



UNITED STATES OF AMERICA.

SUPREME COURT.

RAY W. JONES,

Appellant,

vs.

PATRICK MEEHAN AND JAMES MEEHAN,

Appellees.

Sir:—

You will please take notice that on the 12th day of October, A. D. 1896, at the court room in the Capitol at Washington, D. C., at the opening of the court on that day, or as soon thereafter as counsel can be heard, we shall, on behalf of the appellant above named, present to the court a motion, a copy of which is hereto annexed and herewith served on you, and shall read in support of said motion the record and affidavits, copies of which are herewith handed you.

Yours etc.,

JAMES A. KELLOGG,

Counsel for Appellant,

1129-30-31 Lumber Exchange,

Minneapolis, Minnesota.

To C. D. O'Brien, T. D. O'Brien and Orville Rinehart,

Counsel for Appellees,

Dated September 30th, 1896.

[Title of Cause.]

Now comes the above named appellant by his counsel and moves the court now here to advance the above entitled cause on the calendar of the court and set the same for hearing at the earliest possible date for the reasons following:

I.

The question involved is the right of the government to supervise and control the contract of Tribal Indians.

II.

That relying on the assumption of authority in the government to control the contract of Tribal Indians, appellant has expended several hundred dollars in rentals of the premises involved in this case and is entitled to the possession thereof, but by the proceedings in this case is held out of possession by reason of which he is hindered and delayed in the construction of the mill and appurtenances upon the land for which he has rented the same.

III.

It is of great public importance to the people on and off the Red Lake Reservation that appellant be allowed to proceed with the construction of his mill on the premises involved in this cause.

Dated this 30th day of September, 1896.

JAMES A. KELLOGG,

Counsel for Appellant,
1129-30-31 Lumber Exchange,
Minneapolis, Minnesota.

[Title of Cause.]

Prior to October 2nd, 1863, the land in question had been in the possession of the Red Lake and Pembina bands of Chipewa Indians, and on that day by a treaty concluded at the old crossing of Red Lake River between the Government of the United States and said bands of Indians, the same was ceded to the Government of the United States. Article 9 of said treaty reads as follows: "Upon the urgent request of the Indians, parties to this treaty, there shall be set apart from the tract hereby ceded a reservation of six hundred forty (640) acres near the mouth of Thief River for the Chief Moose Dung," of which said reservation, the land in question, in this cause, viz: Lot one (1) in section thirty-four (34) is a part. Subsequent to the treaty and before the survey into Government sub-divisions this Indian died and the present chief Mon-si-mo made selection of the lands and the same was set apart and designated upon the maps and plats of the Government of the United States as "Moose Dung's Reservation." The elder chief and the present chief were both Tribal Indians. The appellant procured from the present chief a lease of lot

one (1) for the period of twenty (20) years for the purpose of placing thereon a saw mill for the manufacture of lumber to which he would bring the logs from Red Lake River which flows along the margin of said lot one.

Subsequent to the procurement of the lease from the Indian there was introduced into congress a joint resolution and duly passed and approved August 4th, 1894, and known as private resolution No. 5, which reads as follows: "Resolved by the Senate and House of Representatives of the United States of America in Congress assembled that the Secretary of the Interior be and he is hereby authorized to approve, if in his discretion he deems the same proper and advisable, and upon such terms and limitations as he may impose, that certain lease made and executed by Mon-si-mo, commonly called Moose Dung, to Ray W. Jones of lot one in section thirty-four, in township one hundred and fifty-four north, of range forty-three west, in the county of Polk and state of Minnesota, which said lease is now on file in the office of the Indian affairs." And afterwards and on the 13th day of November, 1895, the Secretary of the Interior duly approved said lease to Jones, modifying the terms and conditions of the lease whereby the rental was increased from two hundred dollars (\$200) to four hundred dollars (\$400) per annum, and providing that at periods of five (5) years each the rental should be readjusted and approved by the department of the Interior. Lot one was vacant and unoccupied until about the 6th day of December, when the appellees took possession of about ten (10) feet along the shore of Red Lake River, under the lease given by said Moose Dung dated the 7th day of November, 1891, in which the premises leased are described as follows: "Ten (10) feet wide off the bank of the Red Lake River along the waters edge as the bank is flooded by the certain dam constructed across the said Red Lake River * * * same to be used for storing logs, erecting piers and booms and maintaining same to the design of the parties of the second part and for the use and purposes and for all purposes connected with lumbering industry thereby to convey all shore rights for the term of this lease for lumbering purposes" upon a consideration of twenty-five dollars (\$25.00) per annum for the period of ten years.

When application was made to the Interior department for approval of the Jones lease the appellees opposed the approval of the Jones lease and sought to have approved by the depart-

ment a lease made by the said Indian to the appellees and dated August 20th, 1894, and also the lease dated November 7th, 1891, both of which were disapproved by the department of the Interior.

After the appellees had taken possession of the strip along the waters edge on about December 6th, 1894, they brought this action to quiet title.

The rental in the Jones lease by the approval of the Secretary of the Interior was made payable to United States Agent in charge of the Chippewa Indians in Minnesota, to be paid by him to the heirs of the elder chief Mon-si-mo. In the performance of this duty the agent ascertained that the elder chief left surviving him five heirs other than the present chief Mon-si-mo, and when this fact was determined the appellant obtained from the five other heirs a lease upon the same terms and conditions as that provided for by the Secretary of the Interior of the lease from Mon-si-mo, and the rental has been paid by the appellant to the Indian Agent and by him paid and received by the several heirs of the elder Mon-si-mo. The court for the Eighth Circuit, District of Minnesota and Fourth Division, by its decree held that the lease of November 7th, 1891, was a valid demise of the premises described therein, quieted the title in the appellees and perpetually enjoined the appellant from taking possession thereof.

Subsequent to the procurement of the lease from the five other heirs of the elder chief the appellant asked to file a supplemental answer setting up that fact, which application the court denied.

Jurisdictional grounds in the Circuit Court is diverse citizenship of the parties. The Circuit Court in deciding it held that the treaty gave to the elder chief a title in fee and that the present chief, Mon-si-mo, might convey that title without the intervention or the approval of the Government. An appeal was taken from this decree to the United States Circuit Court of Appeals for the Eighth Circuit and was by that court dismissed on the grounds that it had not jurisdiction.

It is undisputed that the elder chief and all his heirs now living are Tribal Indians under the care and supervision of the Government of the United States and living on a general reservation set apart for the Red Lake band of Chippewa Indians, known as the Red Lake reservation in the state of Minnesota.

The question to be determined is (1) whether a full blood

Tribal Indian living on a general reservation under the care and supervision of the United States through its agent may make a valid demise of the lands in which the reservation is made to an individual full blood Tribal Indian by a treaty stipulation in which there are no words of grant without the consent and approval of the Government of the United States.

For a full statement and discussion of the case appellant begs leave to refer the court to the brief in his behalf on file with the clerk of this court. This case having been taken on appeal to the United States Circuit Court of Appeals for the Eighth Circuit, the record and brief was printed for that court and copies thereof are now on file in this court, to which appellant begs leave to refer the court.

Respectfully submitted,

JAMES A. KELLOGG,

Counsel for appellant,

1129-30-31 Lumber Exchange,

Minneapolis, Minnesota.

[Title of Cause.]

STATE OF MINNESOTA,)
COUNTY OF HENNEPIN.) ss.

Ray W. Jones, being first duly sworn, deposes and says that he is the appellant above named and that he procured a lease from the Indian Mon-si-mo of the land in the record described, for the purpose and with the intention of erecting thereon a saw mill and the usual appurtenances, and that he is now desirous and anxious to construct such mill and appurtenances for the purpose of manufacturing lumber, laths and shingles and other articles from forest products, and that by reason of the delay he is seriously injured and damaged.

Deponent further says that as is disclosed by the record in this cause the rental is four hundred dollars (\$400.00) per annum, and with that he procured the lease from the said Indian Mon-si-mo, and the approval thereof by the Government of the United States. Believing that he would thereby be enabled to occupy said premises with his said enterprise.

Deponent further says that it is material and necessary for deponent to know at the earliest possible moment if he be allowed to occupy said premises with his said enterprise and that

if he is not that he may procure another location and construct the same at a time when the same may be constructed at a less cost than at a later period.

Wherefore, deponent asks this Honorable Court to advance the hearing of said cause upon the calendar and to hear and dispose of the same at their earliest possible moment.

RAY W. JONES.

Subscribed and sworn to before me, this 29th day of September, 1896.

JAMES A. KELLOGG,

Notary Public,

Hennepin County, Minnesota.

[Notarial Seal.]

[Title of Cause.]

James A. Kellogg came personally before me, and being first duly sworn, deposes and says that he is counsel for the above named appellant in the above entitled cause. That he has been solicitor for the appellant in said cause from its commencement and in charge thereof. That after the decree was entered in the Circuit Court deponent believed that an appeal lay to the United States Circuit Court of Appeals, Eighth Circuit, and accordingly perfected an appeal to said court; the same was duly docketed for the May, A. D. 1896 term of said court, whereupon the appellees presented to said court the motion following:

"The appellees move to dismiss the appeal herein, heretofore allowed and taken to this court from the United States Circuit Court for the district of Minnesota, fourth division, for the following reasons, to-wit: That this court has no jurisdiction to entertain said appeal in that the case is one in which is involved the construction of a treaty made under the authority of the United States, this motion is based on the pleadings, decision and assignments of error and the record in said cause." Deponent says afterwards and on the 28th day of May, 1896, said court of appeals made their order as follows:

"On consideration whereof, it is now here ordered, adjudged and decreed by this court that the appeal in this cause from the said circuit court be and the same is hereby dismissed with costs for want of jurisdiction," and that afterwards the said

Circuit Court of Appeals issued its mandate to the United States Circuit Court, Eighth Circuit, District of Minnesota, a certified copy of which is hereto annexed, marked "A," and made a part hereof.

Deponent further says that it is important to the interests of the appellant that this cause in this court be heard and determined at the earliest possible date, that deponent has had charge of the matter from procuring the lease from the Indian Mon-si-mo, and that the approval of the Government of the United States of the lease so made by Mon-si-mo was procured upon the advice of deponent, and that deponent believed that the lease of land owned and controlled by a Tribal Indian was nugatory and void until approved by the Government of the United States, and so advised the appellant, and that appellant is suffering great damages by the delay caused by the litigation in this cause and further deponent saith not.

JAMES A. KELLOGG.

Subscribed and sworn to before me this 2nd day of October, 1896.

GEO. B. YOUNG,

Notary Public,

Hennepin County, Minnesota.

[Notarial Seal.]

UNITED STATES OF AMERICA, ss.

The President of the United States of America, to the
Honorable the Judges of the Circuit Court of
the United States for the District
of Minnesota.

GREETING:

Whereas, lately in the Circuit Court of the United States for the District of Minnesota, before you, or some of you, in a cause between Patrick Meehan and James Meehan, complainants, and Ray W. Jones, defendant, wherein the decree of the said Circuit Court in said cause, entered on the 16th day of December, A. D. 1895, was in favor of the complainants and against the defendant, as by the inspection of the transcript of the record of the said Circuit Court, which was brought into the United States Circuit Court of Appeals, Eighth Circuit, by virtue of an appeal agreeably to the act of

congress, in such cause made and provided, fully and at large appears.

And whereas, in the present term of May, in the year of our Lord one thousand eight hundred and ninety-six, the said cause came on to be heard before the said United States Circuit Court of Appeals, on the transcript of the record from the Circuit Court of the United States for the District of Minnesota, and upon the motion of appellees to dismiss the appeal herein and was agreed by counsel.

On consideration whereof, it is now here ordered, adjudged and decreed by this court, that the appeal in this cause from the said Circuit Court, be and the same is hereby dismissed with costs for want of jurisdiction, and that Patrick Meehan and James Meehan have and recover against Ray W. Jones the sum of twenty dollars for their costs herein and have execution therefor.

May 28, 1896.

You, therefore, are hereby commanded that such execution and proceedings be had in the same cause, as according to right and justice and the laws of the United States, ought to be had, the said appeal notwithstanding.

Witness, the Honorable MELVILLE W. FULLER, Chief Justice of the Supreme Court of the United States, the fifth day of September, in the year of our Lord one thousand eight hundred and ninety-six.

COST OF APPELLEES.

Clerk.....	} Paid by Appellant.	
Printing Record.....		
Attorney.....		
		\$20.00
		<u>\$20.00</u>

JOHN D. JORDAN,

[Seal of U. S. Circuit
Court of Appeals,
Eighth Circuit.]

Clerk of the United States
Circuit Court of Appeals,
Eighth Circuit.

UNITED STATES OF AMERICA,	} SCT.
DISTRICT OF MINNESOTA,	
Fourth Division.	

I, Oscar B. Hillis, clerk of the Circuit Court of the United States for the District of Minnesota, do hereby certify that I have carefully compared the foregoing paper writing with the

original thereof, which is in my custody as such clerk, and that such copy is a correct copy of such original, and of the whole thereof, in the cause therein named.

Witness my hand as clerk, and the seal of said court, done at my office in Minneapolis, Minnesota, this 2d day of October, A. D. 1896.

OSCAR B. HILLIS, Clerk.

By R. C. MABEY, Deputy.

Endorsed, Filed, Sept. 9th, 1896.

OSCAR B. HILLIS, Clerk.

By R. C. MABEY, Deputy.